

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.500 OF 1995

Sunil Londu Patil     ]  
Age Adult, Occ:Agri.]  
residing at village ]  
Kiravali, Tal.        ]  
Bhiwandi, Dist.Thane]...Appellant

Vs.

The State of                 ]  
Maharashtra                 ]...Respondent

.....  
Mr.B.G.Tangsali Advocate for appellant  
Mr.A.S.Shitole A.P.P. for the State  
.....

**CORAM: SMT.V.K.TAHILRAMANI, J.**

**DATE : NOVEMBER 23, 2004**

**ORAL JUDGMENT:**

1. Through this appeal, the appellant challenges the judgment and order dated 31st July, 1995, passed by the learned Sessions Judge, Thane in Sessions Case No.199 of 1992. By the said judgment and order, the appellant has been convicted for the offence under Sections 354 and 323 of IPC. For the offence under Section 354 of IPC the appellant was sentenced to undergo R.I. for six months and to pay a fine of Rs.300/- in default to suffer R.I. for one month. For the offence under Section 323 of IPC,

the appellant was sentenced to suffer R.I. for one month and fine of Rs. 100/- in default R.I. for one month. The learned Judge directed the substantive sentences to run concurrently.

2. Briefly stated the prosecution case is as under:

. On 17.2.1992, the complainant P.W.2 Surekha Ilat and her husband P.W.3 Suresh Ilat were working at the brick kiln near village Dabhade. In the afternoon Surekha had been to village Dabhade for purchasing food grains. On the way back, one person at Girwali Phata obstructed her, laid her on the ground and pressed her breast. However, Surekha escaped and ran to the brick kiln and informed her husband and other labourers. All the persons rushed to Giravali Phata and they traced the accused who had concealed himself in the hospital premises. Thereafter, all the persons took the accused to the out post Palkhane. The person gave his name as Sunil Londu Patil. Thereafter, the complaint of Surekha came to be recorded. After completion of investigation, the charge-sheet came to be filed.

3. In due course, the case was committed to the Court of Sessions. The charge came to be framed against the accused persons under Section 3(1)(xi)

of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and under Sections 323 and 354 of IPC. The accused pleaded not guilty to the said charge and claimed to be tried.

4. The prosecution has examined six witnesses. After going through the evidence adduced by the prosecution, the learned Sessions Judge convicted and sentenced the appellant as stated in para no.1 above. Hence, this appeal.

5. I have heard Mr.B.G.Tangsali, the learned advocate for the appellant and Mr.A.S.Shitole, the learned A.P.P. for the State.

6. The main witnesses in the present case are the complainant Surekha, her husband Suresh Ilat and one other witness P.W.4 Bhiva Suram. P.W.1 Mohan Mahajan and P.W.5 Gangaram Gaikwad have turned hostile and their evidence is of no use to the prosecution. P.W.6 Mahadeo Kesarkar is the Investigating Officer in the present case. Thus, the prosecution case only stands on the evidence of P.W.2 Surekha Ilat, P.W.3 Suresh Ilat and P.W.4 Bhiva Suram.

7. P.W.2 Surekha is the star witness in the present case. Surekha has stated that on the date of incident, she, her husband Suresh and P.W.4 Bhiva were working at the brick kiln at village Giravali. In the afternoon, she went to village Dabhade for purchasing food grains. When she was returning, at Giravali Phata, one person obstructed on the ground and pressed her breast. However, Surekha escaped and ran to the brick kiln and informed her husband and other labourers. All the persons rushed to Giravali Phata and they traced the accused who had concealed himself in the hospital premises. Thereafter, all the persons took the accused to the out post Palkhane. The person gave his name as Sunil Londu Patil. Thereafter she lodged her complaint. In the present case, it is pertinent to note that accused person was unknown to Surekha. Surekha did not know the accused person nor has she seen him prior to the incident. The incident did not last very long. Thereafter, Surekha went to the brick kiln and informed her husband and others about the incident. As far as the other two witnesses i.e. P.W.3 Suresh the husband of Surekha and P.W.4 Bhiva who were present at the brick kiln, they also did not know the accused nor had they seen him prior to the date of the incident. The incident lasted for a very short time. Looking to the facts of this

case, it cannot be said that Surekha had sufficient opportunity to note the features of the accused so as to identify him later. It is material to note that there is no test identification parade. When these three witnesses i.e. Surekha, Suresh and Bhiva went to Giravali Phata, they saw one person running away. It is to be noted that Suresh and Bhiva had not seen the accused prior to that time. Only on the say of the Surekha, they started chasing the said accused person and ultimately they caught one person hiding in the hospital premises at Dabhade. Looking to these facts of the case, it cannot be said that the identity of the person who had obstructed Surekha and committed offence under Section 354 of IPC, is conclusively proved. Looking to the facts and circumstances of this case, I am of the opinion that the accused is entitled to the benefit of doubt.

8. In view of the above, the appeal is allowed. The judgment and order of conviction and sentence for the offence under Sections 354 and 323 of IPC recorded by the learned District Judge, Thane, dated 31st July, 1995 in Sessions Case No.199 of 1992, is set aside. The appellant is acquitted thereunder. The fine amount if any, paid by the appellant, shall be refunded to the appellant. His bail bonds shall

stand cancelled.

[V.K.TAHILRAMANI.J]